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STATE OF MICHIGAN

IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN

Plaintiff-Appellee

-vs-

STEPHANIE WHITE

Defendant-Appellant.
_____/

Supreme Court No. 150661

Court of Appeals No. 318654

Lower Court No. 12-37836FH

SAGINAW COUNTY PROSECUTOR
Attorney for Plaintiff-Appellee
_____

PETER JON VAN HOEK (P26615)
Attorney for Defendant-Appellant
_____

DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF

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STATEMENT OF JURISDICTION

Defendant-Appellant was convicted in the Saginaw County Circuit Court by jury trial, and a Judgment of Sentence was entered on September 23, 2013. A Claim of Appeal was filed on October 16, 2013, by the trial court pursuant to the indigent defendant's request for the appointment of appellate counsel dated October 1, 2013, as authorized by MCR 6.425(F)(3). This Court has jurisdiction in this appeal as of right provided for by Mich Const 1963, art 1, §20, pursuant to MCL 600.308(1); MCL 770.3; MCR 7.203(A), MCR 7.204(A)(2).

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STATEMENT OF QUESTIONS PRESENTED

I. SHOULD MS. WHITE'S CONVICTION AND SENTENCE FOR RESISTING OR OBSTRUCTING A POLICE OFFICER BE VACATED, AND THE CHARGE DISMISSED WITH PREJUDICE, AS THE PROSECUTION PRESENTED CONSTITUTIONALLY INSUFFICIENT EVIDENCE THAT OFFICER GREEN LEGALLY ENTERED MS. WHITE'S RESIDENCE BASED ONLY ON ARREST WARRANTS FOR HER ADULT SON, WITHOUT A SEARCH WARRANT FOR MS. WHITE'S HOUSE, AS THE OFFICER DID NOT HAVE PROBABLE CAUSE OR A REASONABLE BELIEF THAT STEPHEW WHITE LIVED AT THAT HOUSE, AND THUS THE ENTRY VIOLATED MS. WHITE'S FOURTH AMENDMENT RIGHTS?

Court of Appeals answers, "No".
Defendant-Appellant answers, "Yes".

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STATEMENT OF FACTS

Defendant-Appellant Stephanie White was convicted, at a jury trial in Saginaw County Circuit Court, the Hon. Robert L. Kaczmarek presiding, of one count of resisting or obstructing a police officer. MCL 750.81d(1). The trial occurred on August 7-9, 2013. On September 23, 2013, Judge Kaczmarek sentenced Ms. White to a term of 18 months on probation, with $198 in fees and costs. She has appealed as of right.

The charges at issue in this case arose from an incident during the early evening on September 5, 2012, when Bridgeport Township Police Officer Brent Green entered Ms. White's personal residence at 2855 Germain Drive seeking to execute arrest warrants against her 22-year old son, Stephen White. Ms. White, who is age 44, was arrested by Officer Green when she questioned his authority to enter her house, and sought to bar him from searching her residence without a search warrant.

Officer Green testified he knew of several arrest warrants for Stephen. White, and went to Ms. White's residence to see if he was there. (I, 69-72). He did not have paper copies of the warrants, but rather was aware of the issuance of the warrants from a LIEN report on his squad car's computer. (I, 73-74). He received that information just before he arrived at the house. (I, 73). The prosecution admitted into evidence, without objection from the defense, the LIEN information that Officer Green relied upon. (I, 73-75).[1] He indicated he had been to the house at times in the past when there had been reports of arguments between Mr. White and his girlfriend. (I, 72). He was in his full police uniform at the time, with a handgun and taser. (I, 76).

Officer Green parked one door down from Ms. White's townhouse, and walked up to the rear door of her residence. (I, 78). He alleged that the screen door was closed, but the storm

[1] See Appendix A.

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door was open. Officer Green asserted he looked through the door and saw a white male working in the kitchen, which is entered through the rear doors, and that when he knocked on the door two African-American males, one of whom he believed was Stephen White, walked up to the screen door. (I, 78-79). He testified that Mr. White, upon seeing him outside, turned around and went back further into the house. (I, 79-80). He believed the other African-American male was Stephen White's younger brother, who was around 11 years old.

Officer White testified he called to Stephen White to stop, but that Mr. White continued to walk towards the front portion of the townhouse. (I, 80). Officer White then opened the screen door and entered the house. (I, 81). Inside, he first encountered the younger male, and asked him where Stephen had gone. He did not get any response, and then Ms. White walked around a corner into the dining area of the house, where the officer was then located. (I, 81-82). At this point he no longer had Stephen White in his vision. (I, 82). When he asked Ms. White where Stephen was, she responded by asking him why he was looking for her son. Officer White then advised her he had arrest warrants for Stephen. (I, 83).

According to the officer, Ms. White then stated to him that he needed a search warrant to enter her house. (I, 83). When he went to walk further towards the front area of the residence, Ms. White allegedly stood in front of him and held her arm out to impede his progress or prevent him from going up the stairs to the second floor. (I, 83). Officer Green testified he pushed past Ms. White, and told her to go sit in a chair in the living room. (I, 84).

In response to a question from the prosecutor, Officer Green acknowledged that he did not have any search warrant for Ms. White's residence, and that he advised Ms. White he did not need one because he had seen Stephen in the house and Stephen had walked away from him. (I, 85). According to the officer, Ms. White continued to state that he needed a search warrant, and

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again sought to bar his way from going further into the house. (I, 85). After a short time, during which Ms. White stated she was going to make a 911 call, Officer Green arrested her and placed her into handcuffs. (I, 86-87). He stated she briefly resisted his efforts to cuff her, but he was able to get the handcuffs on her and then took her outside and placed her into the rear seat of his squad car. (I, 88).

A subsequent search of the townhouse, and the front area outside the residence using a police tracking dog, resulted in no evidence of Stephen White's presence or current location. (I, 89). After this search, Officer Green released Ms. White from his custody, telling her that if Stephen returned to the house that night and she called 911 with that information, he would not take her to jail, but that he was still intending to seek an arrest warrant for her. (I, 90).

Officer Green stated in cross-examination that Stephen White did not attempt to close the rear storm door before he walked away. (I, 93). He acknowledged that Ms. White did not attempt to grab or strike at him, but only to impede his progress throughout the house. (I, 94). The white male in the kitchen was determined to be a maintenance man working on the kitchen sink. He was later told by the younger son that Stephen went out the front door, but Officer Green did not see Stephen leaving the house. (I, 98). He agreed he had no other intent or reason to search Ms. White's house other than to arrest Stephen. (I, 98).

The only other prosecution evidence came from Jareth Glyn, the maintenance man who was working in Ms. White's kitchen when Officer Green entered the rear door. When he arrived at the house that evening, there were three people in the house – Ms. White and two African-American males, one taller and older and the other a child. (I, 104). He recalled hearing a knock at the back door, and seeing the child come up to that door. He did not see if the child opened the door for anyone. (I, 105).

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Mr. Glyn overheard the incident between Ms. White and Officer Green while they were in the living room, and testified that Ms. White asked the officer about a warrant and Officer Green responded that "he didn't need a warrant because he had just seen the person he was looking for move through the apartment." (I, 106). He heard the argument over a warrant continue, and then saw Ms. White being led out of the residence in handcuffs. He believed the older male was in the dining room when the officer entered the back door. (I, 110).

The defense presented testimony from two witnesses. Ms. White testified on her own behalf. She stated she came downstairs and saw Officer Green in her dining room, and asked him what he was doing there. (II, 7). When he responded that he was looking for her son Stephen, she told him Stephen was not there. When she asked him why he was looking for Stephen, Officer Green replied that he had warrants for Stephen. (II, 7). In response, Ms. White told the officer that Stephen did not live there, to which he replied that he had "chased him here." (II, 7).

Ms. White testified she had not seen Stephen at the house around that time. (II, 8). She again told the officer that Stephen does not live at her house, to which Officer Green responded that Stephen has "multiple addresses." (II, 9). He then went to the front door and looked outside. When she asked the officer whether he had a warrant, he told her he did not need one. (II, 9). Ms. White denied trying to prevent Officer Green from going to the front door. (II, 9-10). She denied assaulting the officer, stating that all she did was to put out her hand to keep him from going upstairs, but he pushed past her and went up the stairs. (II, 12, 27).

Ms. White admitted she was upset over the officer being in her house and going upstairs. When they came back downstairs, she again told the officer he needed a warrant to enter her house, at which point he arrested her and placed her in handcuffs. (I, 13-14).

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Ms. White did not deny knowing there were arrest warrants out for her son. (II, 18). When asked in cross-examination if Stephen had been at her house at any time that day, she replied he had been there earlier, after she had "called him over to eat." (II, 19). Ms. White stated Stephen came by her house one or twice every two weeks, stating "I hardly see him." (II, 19).

Armani White, Ms. White's younger son (age 13 as of the date of trial) testified he heard someone knock on the door, and called out to his mother, who was upstairs. He asserted she called down to him to open the door, which he did and the officer entered. (I, 115). According to the witness, the officer asked if Stephen was there, stating he "was just chasing him." (I, 115). He heard the officer tell his mother he had seen Stephen run out the front door. (I, 116). He heard his mother tell the officer he could not go upstairs, and ask to see a search warrant, but the officer ignored her and went upstairs anyway. (I, 116-117). When the officer came back downstairs and said he wanted to search the basement, his mother said he could not, and the officer then arrested her. (I, 117). He did hear Officer Green tell his mother that he did not need any warrant. (I, 117).

Armani stated he was the only person who went to the rear door in response to Officer Green's knocking. (I, 117-118). He had seen Stephen at the house earlier that day. (I, 117-118).

Armani stated on cross-examination that Stephen left the house around 30 minutes before Officer Green arrived. (I, 120). He denied that Stephen lived at the house, stating the other bedroom besides his and his mother's belonged to his other brother, Dquan White. (I, 121). He did not recall telling any police officer that Stephen went to the back door with him. He denied speaking to his mother about the incident, or being told by her what to testify to at the trial. (I, 124-125).

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In his final instructions to the jury, Judge Kaczmarek told them a police officer can rely on LIEN information "to enter a house to effectuate an arrest warrant." (III, 42). The jury convicted Ms. White on the charged offense. (III, 46-47).

On direct appeal to the Michigan Court of Appeals, that Court issued an unpublished, per curiam opinion on October 21, 2014. See Appendix B. On December 16, 2014, Ms. White filed an Application for Leave to Appeal in the Michigan Supreme Court. On June 5, 2015, the Supreme Court issued an order directing the clerk of the Court to schedule oral arguments on whether the Court should grant leave to appeal, and ordered the parties to file supplemental briefs by July 17, 2015, 42 days after the issuance of the order.

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I. MS. WHITE'S CONVICTION AND SENTENCE FOR RESISTING OR OBSTRUCTING A POLICE OFFICER SHOULD BE VACATED, AND THE CHARGE DISMISSED WITH PREJUDICE, AS THE PROSECUTION PRESENTED CONSTITUTIONALLY INSUFFICIENT EVIDENCE THAT OFFICER GREEN LEGALLY ENTERED MS. WHITE'S RESIDENCE BASED ONLY ON ARREST WARRANTS FOR HER ADULT SON, WITHOUT A SEARCH WARRANT FOR MS. WHITE'S HOUSE, AS THE OFFICER DID NOT HAVE PROBABLE CAUSE OR A REASONABLE BELIEF THAT STEPHEW WHITE LIVED AT THAT HOUSE, AND THUS THE ENTRY VIOLATED MS. WHITE'S FOURTH AMENDMENT RIGHTS.

Standard of Review:

The applicable appellate standard of review for a claim of constitutionally insufficient evidence is *de novo*. See *People* v *Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

Argument:

Three threshold considerations in this matter are not in dispute between the parties. First, the United States Supreme Court in *Steagald v United States*, 451 US 204; 101 S Ct 1642; 68 L Ed 2d 38 (1981), held the police need a separate search warrant to enter a third party's personal residence to execute an arrest warrant even if they believe the subject of the warrant is then present in the third party's residence. In *Steagald*, the Court ruled that while under their earlier decision in *Payton v New York*, 445 US 573; 100 S Ct 1371; 63 L Ed 2d 639 (1980), the police do not need to obtain a separate search warrant to enter the home of the person named in an outstanding arrest warrant, where the residence being entered belongs to a third party that party's Fourth Amendment right to be free of unreasonable and/or warrantless searches and seizures is not overcome by the existence of an arrest warrant against a non-resident of that house.

Second, Officer Green did not have a search warrant for the residence at 2855 Germain Drive. He had only a LIEN report of five outstanding arrest warrants for Stephen White, the 22

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year old son of the defendant, Stephanie White. See Appendix A. Of those five warrants listed on the LIEN report, only one showed the address for Stephen White as 2855 Germain. The other four warrants, including the warrant most recently entered into the system on August 19, 2012, around three weeks prior to this incident, all showed Mr. White with the address of 4576 Hepburn Place in Saginaw, Michigan.

Third, under current Michigan law, as expressed in this Court's opinion in *People v Moreno*, 491 Mich 38; 814 NW2d 624 (2012), a home owner has the right to resist an illegal entry into his or her home by the police.[2] In order to convict Ms. White under MCL 750.81d(1), the prosecution had to prove, beyond a reasonable doubt, that the office legally entered her home seeking to arrest her son.

Given these three undisputed points, the issue faced by this Court in the instant case comes down to a simple question – did the prosecution meet it burden of proof at Ms. White's trial to show Officer Green's entry into her house was constitutionally permissible based on the pending arrest warrants for her adult son? The answer to that question depends on whether the proofs were sufficient to show that Stephen White lived at 2855 Germain. If he did, the arrest warrants were all the police needed to enter the house. *Payton, supra*. If he did not live there, the entry was unconstitutional, in violation of Stephanie White's Fourth Amendment rights,[3] in the absence of a separate search warrant for her residence. *Steagald, supra*.

[2] In a footnote in their supplemental brief to this Court, Plaintiff-Appellee has asked this Court to overrule the decision made only three years ago in *Moreno, supra*. That question was not raised below, in either the trial court or in the Court of Appeals, and is not part of this Court's order for supplemental briefing. The validity of the *Moreno* decision should not be considered in the case at bar.

[3] Had Stephen White been located and arrested inside his mother's house, he would have had no Fourth Amendment claim, as he had no reasonable expectation of privacy in a residence where he did not live and was only visiting. Stephen White is not a party to this appeal, and his rights are not at issue before this Court.

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Under *Payton, supra*, review of a police entry into a residence based solely on an arrest warrant is reviewed for two questions – 1) whether there is reason to believe that the residence is that of the person named in the warrant, and 2) whether there is a "reasonable belief" that the person is presently in that residence. In the case at bar, no issue has been nor is being raised as to the sufficiency of Officer Green's belief that Stephen White was actually present in 2855 Germain at the time of the entry. He testified he was personally acquainted with Mr. White, having dealt with him on previous occasions, and that he saw Mr. White in the house prior to his entry. The arguments made in Plaintiff's supplemental brief to this Court on that question are thus irrelevant to the real issue before this Court – whether Officer Green had a constitutionally sufficient belief that Mr. White lived at that address. As is clear from the *Steagald* decision, the actual presence of the named suspect on an arrest warrant, standing alone, does not authorize an entry into a third party's residence absent a separate search warrant for that location.

The quantum of proof required to show the residence at issue belongs or is occupied by the subject of an arrest warrant is a matter of some dispute, as set forth in Plaintiff's supplemental brief to this Court. The question raised in these cases is whether the police must have probable cause – the normal standard applied to warrant situations – or a "reasonable belief" that the residence being entered based solely on an arrest warrant is that of the subject of that warrant. Some of the courts have found that these two stated standards are actually equivalent or alternative phrasing of the same test, or are so similar as to be interchangeable. See *United States v Hill*, 649 F3d 258, 262-263 (CA 4, 2011). There does not appear to be any published precedent where this Court has directly reached this question. While Plaintiff's brief appears to suggest that the most directly relevant Federal court precedent to Michigan, the opinion of the Sixth Circuit Court of Appeals in *United States v Hardin*, 539 F3d 404 (CA 6,

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2008), applied a standard of reasonable belief rather than a higher standard of probable cause, in fact the *Hardin* opinion, while discussing at length the various opinions both in prior Sixth Circuit cases and from other Federal Court of Appeals, expressly did not rule on the appropriate standard under the Fourth Amendment for future Sixth Circuit review. Having found that under the particular facts of the case the police in *Hardin* had insufficient evidence in support of the challenged entry into a residence under either standard, the Sixth Circuit wrote it was unnecessary in the case to definitively rule on the proper standard:

> Having concluded that neither *Jones* [*Unites States v* Jones, 641 F2d 425 (CA 6, 1981] nor *Pruitt* [*Unites States v* Pruitt, 458 F3d 477 (CA 6, 2008)] binds us in interpreting the meaning of *Payton's* "reason to believe" language, we explain below that this case, too, does not require that we adopt one standard or the other to evaluate the district court's ruling on Hardin's motion to suppress. That is, even assuming that a lesser reasonable-belief standard applies, the officers in this case did not have sufficient evidence to form a reasonable belief that Hardin was present in the apartment.

539 F3d at 416. (Footnote omitted).

While the *Hardin* opinion, and several other of the cited cases, was concerned with the question of the police belief that the subject named in the warrant was presently in the residence, the issue of the proper standard to apply under *Payton* has also impacted on the question of whether the police entered that suspect's actual residence. A good example of such a case is *Unites States v Shaw*, 707 F3d 666 (CA 6, 2013), also cited in Plaintiff's supplemental brief. In *Shaw*, the police had a warrant stating the female suspect lived an address of 3171 Hendricks in Memphis, Tennessee. However, when they arrived at that street they found no house with that address, but instead two houses, one on each side of the street, having identical address signs of 3170. At that point, without doing any further investigation of this seeming inconsistency, the police elected to approach the one house of the two that appeared to be presently occupied.

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When a woman opened the door to the police, they assumed (incorrectly as it turned out) that she might be the woman named in their warrant. Eventually the police, telling this woman they had a warrant for this address, were admitted into the house. While inside, they discovered evidence of controlled substances, which formed the basis for the charges against Mr. Shaw, the actual owner of this house. In fact, the woman named in the warrant lived in the house across the street.

On review of the District Court's denial of a defense motion to suppress the evidence discovered in the house, the Sixth Circuit reversed. The primary basis for the Court's decision[4] was the police failed to take any of the common and reasonable steps available to them to determine which of the two houses actually was 3171 before attempting an entry:

> One of the houses presumably was mislabeled, and the officers had several options at their fingertips to figure out which house was 3171 Hendricks and which was not. They could have determined which side of the street contained odd-numbered addresses and served the warrant on the "3170" address on that side of the street. They could have checked city records or for that matter Google Maps to identify which house was the right one. Or they could have gone up to one of the houses and asked an occupant which house was 3171 Hendricks and which one was 3170 Hendricks.

707 F3d at 667.

The Sixth Circuit held that what the police actually did – picking one of the two houses on a hunch and then falsely telling the occupant they had a warrant for that house in order to induce consent to enter – was unreasonable under the circumstances. Citing to the opinion in *El Bey v Roop*, 530 F3d 407, 416 (CA 6, 2008), as well as to *Payton, Stegald, and Pruitt*, *supra*, the Court wrote:

[4] The Court also held that even if the entry was permissible, the police remained in the house too long, given they could have and should have discovered their error prior to discovery of the drugs.

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> Was it reasonable to tell the occupant they had an arrest warrant "for this house" when that statement had at least a fifty-fifty likelihood of being false and when readily available alternatives could have confirmed where 3171 Hendricks was? The Fourth Amendment prohibits "unreasonable searches and seizures." U.S. Const. amend. IV. **That means, among treatises full of other requirements, that officers must "take steps to reasonably ensure" they are not entering the wrong home when they execute an arrest warrant.**

Id. at 667-668. (Emphasis added).

The Court found that none of the rationales presented by the prosecution seeking to justify the entry were reasonable or constitutionally sufficient on these facts. In ruling the police, having encountered the situation where neither house had the 3171 address but both showed 3170, failed to take any reasonable steps to determine which house was mislabeled, the Court referred to the police as relying on a "self-imposed shroud of ignorance that made other potential clues look more salient than they were." *Id.* at 668.

In a ruling particularly relevant to the case at bar, the *Shaw* Court rejected the fifth argument in support of the entry as also being unreasonable:

> Reason five: the officers had a fifty-fifty chance of being right, and that alone allowed them to take this approach. Yes, yes, and no. Yes, the officers had even odds of being right—at least as long as they refused to determine which side of the street contained odd-numbered houses. Yes, there was nothing wrong with going up to the house. But, no, officers may not say something is true—that they have an arrest warrant "for this house"—as a basis for obtaining entry into the house when there is a fifty-fifty probability that the statement is false. That is all the more true when there are readily available means for alleviating most, if not all, doubt about the point, and when no officer-safety concerns justify the deception. See *United States v. Hardin*, 539 F.3d 404, 425 n. 12 (6th Cir.2008).

Id. at 668.

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While recognizing the inherent difficulties often faced by the police in executing warrants, and balancing the duty to protect the public versus the rights of individuals, the Court concluded the facts of the case did not demonstrate the police conduct justified the entry:

> But none of this permits officers to tell an occupant that they have a warrant to make an arrest at a given address when they do not. **The officers took a knowing roll of the dice, and perhaps it would have worked had they been right as a matter of chance about the address. But when they were wrong, that was their problem, leaving them with having obtained entry into the wrong house based on a false pretense.** An officer may not falsely tell a homeowner that he has an arrest warrant for a house, then use that falsity as the basis for obtaining entry into the house.
>
> The Supreme Court has said as much. Forty-five years ago, it faced this question: whether "a search can be justified as lawful on the basis of consent when that 'consent' has been given only after the official conducting the search has asserted that he possesses a warrant" when he does not? The answer was no. *Bumper v. North Carolina*, 391 U.S. 543, 546–51, 88 S.Ct. 1788, 20 L.Ed.2d 797 (1968); see also *United States v. Escobar*, 389 F.3d 781, 786 (8th Cir.2004) (holding that officers may not obtain consent to search through a "false claim of legal authority"). The equivalent is true here.

Id. at 669. (Emphasis added).

In the case at bar, Plaintiff has argued Officer Green had a sufficient and reasonable basis for a purported belief that Stephen White currently lived at 2855 Germain Drive based upon that address being on one of the five outstanding warrants for his arrest. In this case, given that all of the other four warrants, including the most recent, listed 4576 Hepburn Place as Mr. White's address, Officer Green had only a 20% chance this was the correct residence for Stephen White, far less than the 50-50 chance in *Shaw*. If that higher percentage was insufficient under the circumstances in *Shaw* to justify the officers' belief they had a valid arrest warrant for that house, certainly the lower chances that Officer Green was at the correct house in this case cannot be sufficient to authorize his entry absent a separate search warrant.

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As in *Shaw*, Officer Green had several commonly used methods to seek to verify Stephen White's current address. He could have checked with the Post Office or utilities to see what they showed as his residence. He could have looked for tax records or public documents, such as a driver's license or deed, showing where Mr. White might be receiving benefits, or had listed his address. He could have checked with possible employers. Obviously, he could have gone to 4576 Hepburn Place to inquire if Mr. White lived there. On this record, he did none of those things. He testified that he just went to Ms. White's house to see if Stephen was presently there. That action, standing alone, did not give him the constitutional right to enter that residence, even where he could see Mr. White through the door.[5]

In fact, Officer Green never expressly testified he believed Stephen White currently lived at 2855 Germain Drive. He only stated he had interacted with Mr. White at that address at one undisclosed time in the past, stating he had not had contact with Mr. White or that address "in a little while," and that this address was listed on one of the warrants. (I, 72-73, 79). He acknowledged he had never personally been inside that residence. (I, 80-81). Officer Green agreed the while the house was searched, including the upstairs, after Ms. White was taken into custody, Stephen White was not found inside. (I, 88-89). No testimony or evidence was offered by the prosecution that anything belonging to Stephen White, or documentation showing he lived there, was found or seized from the house.

Proof of residence is an issue that arises in several other areas of Michigan criminal law. In those areas, the prosecution normally submits circumstantial evidence of a defendant's

[5] At no point did Officer Green testify, or has the prosecution ever asserted, there were exigent circumstances or a possible emergency situation in the home that would have otherwise justified a warrantless entry. Officer Green did not testify as to any hot pursuit of Mr. White, stating he first saw him in the house when he walked up to and knocked on the rear door, nor did he ever testify he was concerned that anyone in the house was in danger due to Stephen's presence in the house. This case depends entirely on whether the arrest warrants justified the entry in the absence of a separate search warrant for that address.

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residence in a particular location or structure if that issue is disputed or necessary at trial. For example, numerous Michigan cases have discussed the theory of constructive possession of controlled substances found in a house or apartment that was allegedly occupied by the accused. Often, the prosecution presents evidence that in addition to the controlled substances, the police located property belonging to the accused, mail or other documents linking the accused's name to the particular address, the presence of clothing that matches the gender and size of the accused, or testimony from witnesses as to the frequent or common presence of the accused at that location. See, for example, *People v Wolfe*, 440 Mich 508; 489 NW2d 748 (1992). In *Wolfe*, this Court noted it is "well established that a person's presence, by itself, at a location where drugs are found is insufficient to prove constructive possession. *Id.* at 520. The Court found constitutionally sufficient evidence in the case going beyond Mr. Wolfe's presence, along with others, when the apartment was raided and the controlled substances found:

> In this case, at least three factors were shown that linked the defendant with the crack cocaine found at the Sixth Street apartment.
>
> First, there was evidence that defendant Wolfe was in control of the premises where the drugs were found. Wolfe testified that he invited the other men to Saginaw and arranged to meet them at the Sixth Street apartment. He testified that the others who came from Detroit that day did not know where the apartment was located. Defendant Wolfe planned to show them where it was, and, as Rogers testified, he did show them. According to Rogers, he and the others were flagged down by Wolfe from the porch of the apartment when he saw them approaching from the street. Further, Wolfe was the only person found to have a key to the apartment. Surely, it was reasonable for the jury to infer that the evidence "demonstrated more than [Wolfe's] mere presence at the apartment as a casual invitee." * * * . Indeed, because testimony of the officers supported the conclusion that Wolfe had the only key to the apartment and was the only one of the men from Detroit who knew the precise location of the apartment, a rational jury could logically have inferred from all the circumstances that, among those found in the apartment, Wolfe was the one with control over the premises.

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> Second, Wolfe fled with the other men into a back bedroom when the police entered the apartment to search it. There was evidence that attempts were being made in that bedroom to conceal the crack cocaine. In *Williams, supra,* the Court of Appeals determined that sufficient evidence of possession was shown when "defendant was discovered by police officers in an abandoned home, crouching over a can containing packets of cocaine in an apparent attempt to destroy them." 188 Mich.App. at 57, 469 N.W.2d at 4.
>
> Third, there was substantial evidence that Wolfe was working with the other men in this crack-selling operation.

440 Mich at 522-523. (Citations omitted). See also *People v McGhee*, 268 Mich App 600, 612-613; 709 NW2d 595 (2005) (the police located numerous documents within the house that was searched showing the defendant's name as the owner of the house);[6] *People v Echavarria*, 233 Mich App 356, 370-371; 592 NW 2d 737 (1999); *People v Hardiman*, 466 Mich 417, 421-423; 646 NW2d 158 (2002).

In the case at bar, no similar type of evidence was presented seeking to establish circumstantially that Stephen White lived at this residence. There was no evidence he had any control over the house, that he had keys to the house, that he regularly engaged in conduct, let alone criminal conduct, at the house, or that he had been frequently seen there. In addition, it was never disclosed on the record where the police got the information they used to list the Germain address for Mr. White on the one warrant. No testimony was presented that either Mr. White, Ms. White, or anyone associated with him gave the police that address as his residence. Officer Green testified his prior contact with Mr. White had been in relation to an argument or fight he had with his girlfriend. When asked about the warrants shown on the LIEN report, he testified as follows:

[6] Justice Zahra was on the panel which decided the *McGhee* case when he was a judge on the Court of Appeals.

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> Q And how is it that you were familiar with Mr. White?
> A I've been over to the house a couple different times when he and his girlfriend had had arguments.
> Q Do you know whether or not there was any warrants out in relationship to possibly any of these arguments?
> A The warrant that I was picking up was for one day he got in a fight with his girlfriend and took her car. (I, 72).

The one warrant of the five that listed the Germain address was for a charge of domestic abuse. See Appendix A. Accordingly, if that alleged fight took place between Mr. White and his girlfriend while there were at Ms. White's house, it is clearly possible the notation of the address on that one warrant actually refers to the location of the charged offense, and not to Mr. White's personal residence or domicile. A misunderstanding or clerical error by a police officer cannot be sufficient proof of residence to have an entry fall within the *Payton* rather than the *Steagald* rule, just as the apparent error in the house address signs in *Shaw*, *supra*, did not justify the police in entering either or both houses showing the same address.

In *People v Dowdy*, 489 Mich 373; 802 NW2d 239 (2011), this Court took up another situation in Michigan criminal law where proof of residence is critical – the reporting requirements of the Sex Offender Registration Act. In ruling on whether a homeless person is still required to both register a residence and notify the authorities of any change in residence under the act, the Court dealt at length with the definitions of the terms "residence" and "domicile." While the case specifically dealt with the statutory language of SORA, the Court's discussions are relevant to what evidence normally shows the existence of those conditions. The Court wrote:

> To comply with the statute's registration requirements, sex offenders must provide information regarding their "residence" or "domicile." SORA defines "residence" for "registration and voting purposes" as

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> that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act.
>
> Thus, a person's "residence" under SORA is a combination of three things: that place where a person (1) habitually sleeps, (2) keeps personal effects, and (3) has a regular place of lodging.
>
> The words that the Legislature used to define "residence" have a broad scope and contemplate a wide array of "residences." However, the definition of "residence" does not include every location where a person might sleep, regardless of the length of the stay. A "residence," for purposes of SORA, is only that place where an offender habitually sleeps and establishes regular lodging.

489 Mich at 382-383. (Footnotes omitted).

As to the related term "domicile," the Court gave the following definition:

> Michigan courts have defined "domicile" as " 'that place where a person has voluntarily fixed his abode not for a mere special or temporary purpose, but with a present intention of making it his home, either permanently or for an indefinite or unlimited length of time.' " Similarly, a domicile is "the place where a person has his home, with no present intention of removing, and to which he intends to return after going elsewhere for a longer or shorter time." More significant to the instant case is that it has long been the law of this state that "[e]very person must have a domicile somewhere." A person may have only one domicile, which continues until the person acquires a different one. Thus, the essential characteristic of a "domicile" that separates it from a "residence" is that, under Michigan law, every person has a "domicile."

Id. at 385. (Footnotes omitted).

By analogy, the evidence in this case does not support any conclusion that Officer Green either had probable cause or a reasonable belief that Stephen White's residence or domicile was at 2855 Germain Drive. There was no evidence that Mr. White habitually slept at that house, that he kept any personal belongings there, that he had established any regular lodging habits

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there, or that he intended to make that house his domicile for a permanent or indefinite amount of time. All the evidence showed was that at the moment Officer Green approached the back door of the house, he was present at his mother's residence – clearly not an uncommon occurrence for adult children of a homeowner.

The critical inquiry for an appellate court reviewing a claim of insufficient evidence is whether, viewing the evidence in the light most favorable to the prosecutor, a rational trier of fact could have found the charged crime was proven beyond a reasonable doubt. *Jackson* v *Virginia*, 443 US 307; 99 S Ct 2781; 61 L Ed 2d 560 (1979); *People* v *Hampton*, 407 Mich 354; 285 NW2d 284 (1979). The existence of merely some evidence to support the conviction is not enough. In *Jackson*, the Supreme Court disavowed the prior "no evidence" insufficiency standard, from *Thompson v City of Louisville*, 362 US 199; 80 S Ct 624; 4 L Ed 2d 654 (1960), which required reversal only upon a record "wholly devoid of any relevant evidence" of guilt, finding that standard "simply inadequate" to protect against misapplications of the constitutional standard of reasonable doubt.:

> That the *Thompson* "no evidence" rule is simply inadequate to protect against misapplications of the constitutional standard of reasonable doubt is readily apparent. "[A] mere modicum of evidence may satisfy a 'no evidence' standard . . . ." *Jacobellis* v. *Ohio*, 378 U.S. 184, 202, 84 S.Ct. 1676, 1686, 12 L.Ed.2d 793 (Warren, C.J., dissenting). Any evidence that is relevant-that has any tendency to make the existence of an element of a crime slightly more probable than it would be without the evidence, cf. Fed.Rule Evid. 401-could be deemed a "mere modicum." But it could not seriously be argued that such a "modicum" of evidence could by itself rationally support a conviction beyond a reasonable doubt. The *Thompson* doctrine simply fails to supply a workable or even a predictable standard for determining whether the due process command of *Winship* has been honored.

443 US at 320.

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The Court held a reviewing court must instead find there was "evidence necessary to convince a trier of fact beyond a reasonable doubt of the existence of every element of the offense." *Id* at 316 (emphasis added); *In re Winship*, 397 US 358; 90 S Ct 1068; 25 L Ed 2d 368 (1970). While the evidence must be considered in a light most favorable to the prosecution, a reviewing court cannot indulge in speculation but must find sufficient evidence to support a finding of guilt beyond a reasonable doubt as to every element of the charged offense. *Hampton, supra*.

A conviction that is not supported by sufficient evidence under this standard violates due process of law. US Const, Amends V, VIX; Const 1963, art 1, § 17; *Jackson, supra*. Thus, if sufficient evidence is not introduced, due process requires reversal and a judgment of acquittal must be entered. *Hampton, supra* at 368.

In the case at bar, while the fact the Germain Drive address is listed on one of the five arrest warrants for Stephen White is arguably "some" evidence he lived at that address, it does not rise, in the absence of any other direct or circumstantial evidence, to meet this constitutional standard for sufficient evidence on an essential element of the charged offense, even when viewed in a light most favorable to the prosecution. The only reasonable interpretation of the evidence in this case is that Officer Green, knowing Ms. White lived at that address and that he had seen Stephen there at some undisclosed date in the past, decided to drive to the address on the oft-chance that Stephen was then visiting his mother's house, and that the officer believed, incorrectly, that the arrest warrants for Mr. White permitted him to enter Ms. White's house, without a separate search warrant, once he saw Stephen inside. That entry violated Ms. White's Fourth Amendment rights under *Steagald, supra*, and thus gave her the right, pursuant to *Moreno, supra,* to legally resist Officer Green's illegal entry.

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A decision in Ms. White's favor in this case would not hamstring or unreasonably limit the police's ability to execute arrest warrants. Once Officer Green saw Stephen inside the house, all he had to do was maintain surveillance on the house, and arrest Stephen once he stepped outside, or seek a search warrant for the house based on his observation. See *Steagald, supra*, at 221. Stephen White had no Fourth Amendment right that would be violated if he was arrested in public, or even within his mother's house, as long as the arrest warrants were issued with probable cause. Stephanie White, however, had a reasonable expectation of privacy that the police would not enter her house, and thereafter arrest her for resistance, in the absence of a search warrant validly issued by a neutral magistrate. On this record, the prosecution presented constitutionally insufficient evidence, under either a probable cause or reasonable belief standard, that Officer Green permissibly entered the house based only on the arrest warrants. The resulting conviction and sentence should be reversed and the charge dismissed with prejudice.

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SUMMARY AND RELIEF

WHEREFORE, for the foregoing reasons, Defendant-Appellant asks that this Honorable Court either grant leave to appeal, or peremptorily reverse her conviction and sentence and order the charge dismissed with prejudice.

Respectfully submitted,

STATE APPELLATE DEFENDER OFFICE

/s/ Peter Jon Van Hoek

BY:_____

PETER JON VAN HOEK (P26615)
Assistant Defender
3300 Penobscot Building
645 Griswold
Detroit, Michigan 48226
(313) 256-9833

Dated: July 17, 2015

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APPENDIX A

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eport).

NTERVIEW SUSPECT STEPHANIE WHITE:
I spoke with White in the rear of my patrol vehicle. I asked her if she knew where Stephen could be. She advised hat he could be anywhere, that he hangs out with several different people, and she didn't know where he would be.

I explained to White why she was in handcuffs. I advised her that she was interfering with an investigation and causing a safety concern for me and my fellow officers by approaching us in the house. I advised White that her son Stephen has a warning that he is possibly a violent offender.

White advised she understood why I placed her in handcuffs. I advised White that I would not take her to jail tonight if she would contact 911 as soon as Stephen came back to the residence. I advised White that I would still be making a report of the incident but, because she had calmed down and has helped the BTPD, in the past I would not take her to jail tonight.

White stated she would contact 911 but she didn't think that Stephen would come back to the house because of all the police.

INJURIES:
No injuries were reported at time of incident.

WARRANTS:
LEIN 7037 8476 09/05/12 2020 SCCDCOMP2.
MI7386300
RE: WHITE/STEPHEN/DEMARSHA/ UM 02/27/1991
FOR: BRENT GREEN/BP
OPR: BRENT GREEN

CAUTION-CAUTION-:VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676
FBI:657904KC4 PRN:670702
SID:2579534X SMT:TAT L ARM
ADDNL SMT:TAT R ARM
ADD:4576 HEPBURN ST SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS
OOC:TRESPASSING
OCA:11-8930 DOW:03/15/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:11-008930-OM
OCG:TRESPASSING

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PICKUP:WILL PICKUP WITHIN 50 MILES
BOND:$ 5000 CASH OR SURETY
REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND
ALIAS NAME:FONZ/X//
ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1413 HRS
MODIFIED LEIN:03/15/2012 1554 HRS
SYSIDNO:42910568
****

CAUTION-CAUTION-:VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN SOC:363-13-1676
FBI:657904KC4 PRN:670702
SID:2579534X SMT:TAT L ARM
ADDNL SMT:TAT R ARM
ADD:4576 HEPBURN SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS
OOC:TRESPASSING
OCA:11-9134 DOW:03/15/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:11-009173-OM
OCG:TRESPASSING
PICKUP:WILL PICKUP WITHIN 50 MILES
BOND:$ 5000 CASH OR SURETY
REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND
ALIAS NAME:FONZ/X//
ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1415 HRS
MODIFIED LEIN:03/15/2012 1555 HRS
SYSIDNO:42910587
****

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CAUTION-CAUTION-:VIOLENT TENDENCIES

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676
FBI:657904KC4 PRN:670702
SID:2579534X SMT:TAT L ARM
ADDNL SMT:TAT R ARM
ADD:4576 HEPBURN SAGINAW MI 48603 POB:MI

OFF:CRIMINAL BENCH FOR FAILURE TO APPEAR - SEE MIS SEE MIS
OOC:TRESPASSING
OCA:11-9362 DOW:03/15/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:11-009466-OM
OCG:TRESPASSING
PICKUP:WILL PICKUP WITHIN 50 MILES
BOND:$ 5000 CASH OR SURETY
REMARKS:ORIG CHARGE CRIMINAL TRESPASS-OR 10% BOND
ALIAS NAME:FONZ/X//
ALIAS NAME:WHITE/STEPHEN/DEMARSHJA/

WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT APPEARANCE INFORMATION CONTACT MI7371700-PD SAGINAW

ENTERED LEIN:03/15/2012 1426 HRS
MODIFIED LEIN:03/15/2012 1558 HRS
SYSIDNO:42910668
****

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:235
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI SOC:363-13-1676
CTN:731200412501
ADD:2855 GERMAIN SAGINAW MI 48603

OFF:MISDEMEANOR FOR AGGRAV ASSLT - FAMILY-STGARM
CIT:750.813 (DOMESTIC VIOLENCE - SECOND OFFENSE NOTICE)
OCA:470-12 DOW:08/03/2012
COURTORI:MI730035J-CT 70TH DIST SAGINAW
CRTDOCKETNO:12-004350-SM
EXTRADITE:YES PICKUP:WILL PICKUP STATEWIDE
BOND:$ 5000 CASH OR SURETY
REMARKS:DOMESTIC VIO-2ND OFFENSE/OR 10% BOND

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WARRANT CONFIRMED AND VALID - FOR BOND, PICKUP, AND COURT APPEARANCE INFORMATION CONTACT MI7386300-PD BRIDGEPORT TWP

ENTERED LEIN:08/03/2012 1549 HRS
FORWARDED TO NCIC NIC:W075596165
SYSIDNO:43185003
****

NAM:WHITE/STEPHEN/DEMARSHA/ DOB:02/27/1991
RAC:BLACK SEX:MALE HGT:603 WGT:225
HAI:BLACK EYE:BROWN OLN:W300-777-139-151 OLS:MI
ADD:4576 HEPBURN PL SAGINAW MI 48603

OFF:CRIMINAL BENCH FOR CONTEMPT OF COURT FTA TO PSI
OCA:12-10592 DOW:08/13/2012
COURTORI:MI090015J-CT 18TH CIR BAY CITY
CRTDOCKETNO:12-10592
PICKUP:WILL PICKUP STATEWIDE
REMARKS:FAILED TO REPORT TO PSI FOR SIGNUP, VIOL BOND CONDITIONS NO BOND
ALIAS NAME:LONG/JOHN/DEMARSHA/
MI0910900-SO BAY CO
ENTERED LEIN:08/19/2012 1156 HRS
SYSIDNO:43211177
IMMED CONFIRM WITH MI0910900-SO BAY CO
****

ARREST:
Stephen was not located.

Stephanie was released on scene.

OTHER DEPARTMENTS:
I was assisted by Buena Vista Ofc. Norris, and SCSD Dep. House, Dep, Jamie, and Dep. Wise.

EXTERNAL DOCUMENTS:
CCH

STATUS:
Open pending SCPO review

CASE STATUS:
ACTIVE

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APPENDIX B

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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHANIE WHITE,

Defendant-Appellant.

UNPUBLISHED
October 21, 2014

No. 318654
Saginaw Circuit Court
LC No. 12-037836-FH

Before: METER, P.J., and WHITBECK and RIORDAN, JJ.

PER CURIAM.

Defendant, Stephanie White, appeals as of right her conviction, following a jury trial, of resisting or obstructing a police officer.[1] The trial court sentenced Stephanie White to serve 18 months' probation. Because the police officer lawfully entered the home to arrest Stephen White, Stephanie White's son, we affirm.

I. FACTS

Bridgeport Township Police Officer Brent Green testified that, on September 5, 2012, he arrived at 2855 Germain Drive. According to Officer Green, Stephen White had five outstanding arrest warrants, one of which identified 2855 Germain Drive as Stephen White's address. Officer Green testified that he had previously been to 2855 at least one other time when Stephen White was there, and that Stephanie White had called "a couple times when Stephen was acting up and we talked." Officer Green testified that he accessed and reviewed the outstanding arrest warrants and Stephen White's physical description in the Law Enforcement Information Network (LEIN) before arriving at the home.

Officer Green testified that he parked one house away from 2855 Germain Drive and approached the home's back door. According to Officer Green, the storm door was open but the screen door was closed. Through the screen door, he saw three people—a man working on the sink, Stephen White, and Stephanie White's thirteen-year-old son. Stephen White started to open the back door, then said "hold up" and moved quickly toward the front of the home.

[1] MCL 750.81d(1).

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Officer Green stopped the door from closing and entered the home. He called for Stephen White to stop and asked the thirteen-year-old where Stephen White had gone.

Jareth Glyn testified that he had been working on the kitchen sink for about 45 minutes when Officer Green arrived. According to Glyn, the last time he saw Stephen White was shortly before Officer Green arrived. Glyn testified that Officer Green knocked on the door and the thirteen-year-old went to the door.

The thirteen-year-old testified that when he saw Officer Green approaching, he called upstairs to Stephanie White, who told him to open the door. According to the thirteen-year-old, Officer Green came inside and said that he was chasing Stephen White. At trial, the thirteen-year-old testified that Stephen White had left about 30 minutes before. However, he also testified that he told police officers the truth during an interview four days after the incident, when he stated that Stephen White went to the back door, said "hold up," and then walked quickly out the front door.

Stephanie White testified that she came downstairs, saw Officer Green in her dining room, and asked him what he was doing there. According to Stephanie White, she did not prevent Officer Green from going to the front door and she was behind Officer Green. She did not prevent Officer Green from searching the home. However, she did repeatedly state that Officer Green could not search her house without a warrant, and she put her hand out as "body language . . . like pointing towards that way." She said that she did not attempt to physically block Officer Green.

According to Officer Green, he told Stephanie White that Stephen White had several outstanding arrest warrants. Officer Green attempted to continue through the house to look for Stephen White, but Stephanie White "kind of put her arm up and kind of turned in front of me so that I couldn't progress." Stephanie White told Officer Green that he needed a search warrant to be in her home, and Officer Green informed her that he did not need a warrant because he had seen Stephen White. Stephanie White told Officer Green that Stephen White was not in the home and that he should leave. Officer Green told Stephanie White that he would leave after he confirmed that Stephen White was not there.

According to Officer Green, Stephanie White continued to "get in front of [him]" and yell that he needed a search warrant. Officer Green told Stephanie White that if she did not sit down, he would handcuff her for his safety. Stephanie White continued to loudly demand a search warrant and, because he was concerned for his safety and because "she was becoming irate," he attempted to handcuff Stephanie White. Stephanie White resisted by pulling one of her wrists away, and Officer Green had to pin her against the wall to handcuff her.

The prosecutor charged Stephanie White with resisting or obstructing a police officer. The jury found Stephanie White guilty.

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II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.[2] Thus, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.[3] We review the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the prosecutor proved crime's elements beyond a reasonable doubt.[4]

B. LEGAL STANDARDS

MCL 750.81d(1) provides in part that a person who "... obstructs, opposes, or endangers a person who the individual knows or has reason to know is performing his or her duties is guilty of a felony . . . ." The elements of resisting or obstructing are that

> (1) the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered a police officer, and (2) the defendant knew or had reason to know that the person that the defendant assaulted, battered, wounded, resisted, obstructed, opposed, or endangered was a police officer performing his or her duties.[5]

MCL 750.81d(1) does not abrogate a defendant's common-law right to resist an unlawful arrest.[6] The lawfulness of the officer's arrest is an element that the prosecutor must prove at trial.[7] Thus, though the lawfulness of an officer's arrest is normally a question of law for the judge, it is a question of fact for the jury in a resisting and obstructing case.[8]

Before making an arrest, an officer generally obtains an arrest warrant from a magistrate on a showing of probable cause.[9] A validly issued arrest warrant gives the officer authority to enter the suspect's residence in order to arrest the suspect, if the officer has reason to believe that

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[2] *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

[3] *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

[4] *Id.*; *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

[5] *People v Corr*, 287 Mich App 499, 503; 788 NW2d 860 (2010).

[6] *People v Moreno*, 491 Mich 38, 52; 814 NW2d 624 (2012).

[7] *Id.* at 51-52; *People v Quinn*, ___ Mich App ___, ___; ___ NW2d ___ (2014); slip op at 2-3.

[8] *Id.*; *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986).

[9] *People v Manning*, 243 Mich App 615, 621; 624 NW2d 746 (2000); *Steagald v United States*, 451 US 204, 213; 101 S Ct 1642; 68 L Ed 2d 38 (1981).

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the suspect lives at the address and the suspect is currently there.[10] But an officer may not enter a third party's home in order to arrest a suspect without obtaining a search warrant, regardless of whether the officer reasonably believes that the suspect is in the third party's home.[11]

C. APPLYING THE STANDARDS

Stephanie White contends that there was insufficient evidence for a rational trier of fact to conclude that Officer Green's entry into the home was lawful. Stephanie White contends that Officer Green's entry was unlawful because her home was third party's residence. We disagree.

When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact's role to determine the weight of the evidence or the credibility of the witnesses.[12] Here, four of the five arrest warrants listed Stephen White's address as another location. And witnesses at trial, including Stephanie White and the thirteen-year-old, testified that Stephen White did not actually live at 2855 Germain Drive.

However, this does not negate that one of the warrants *did* indicate that Stephen White's residence was 2855 Germain Drive. Further, Officer Green testified that he had previously interacted with Stephen White at 2855 Germain Drive. Officer Green also testified that when he arrived at 2855 Germain Drive, he saw Stephen White in the home's kitchen through the open screen door.

Viewing this evidence in the light most favorable to the prosecutor, we conclude that a rational juror could find that Officer Green had reason to believe that Stephen White lived at the residence because a warrant listed 2855 Germain Drive as Stephen White's residence, Officer Green had previously interacted with Stephen White at Germain Drive, and Officer Green saw Stephen White in the home. A rational juror could also find that Officer Green had reason to believe Stephen White was currently in the home because Officer Green saw him through the home's screen door.

Accordingly, viewing the evidence in the light most favorable to the prosecutor, we conclude that sufficient evidence supported Stephanie White's resisting and obstructing conviction.

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[10] *Payton v New York*, 445 US 573, 603; 100 S Ct 1371; 63 L Ed 2d 639 (1980).

[11] *Steagald*, 451 US at 213; *Garden City v Stark*, 120 Mich App 350, 351-353; 327 NW2d 474 (1982).

[12] *Wolfe*, 440 Mich at 514-515; *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

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III. JURY INSTRUCTIONS

Stephanie White briefly asserts that the trial court's instruction that Officer Green could rely on LEIN information improperly tainted the jury. We conclude that Stephanie White has waived our review of this issue.

A defendant's waiver intentionally abandons and forfeits appellate review of a claimed deprivation of a right.[13] A defendant may waive his or her challenge to jury instructions.[14] When the trial court asks the party whether it has any objections to the jury instructions and the party responds negatively, it is an affirmative approval of the trial court's instructions.[15]

Here, the trial court twice asked defense counsel whether counsel was satisfied with the jury instructions, and counsel expressed satisfaction with the instructions. Thus, we conclude that counsel waived any challenge to the trial court's jury instructions.

IV. CONCLUSION

We conclude that the prosecutor presented sufficient evidence of the lawfulness of Officer Green's entry into 2855 Germain Drive. We also conclude that Stephanie White has waived any challenge to the jury instructions.

We affirm.

/s/ Patrick M. Meter
/s/ William C. Whitbeck
/s/ Michael J. Riordan

[13] *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

[14] *Id.* at 215.

[15] *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 332 (2002).